No. 76-1821

In the Supreme Court of the United States

OCTOBER TERM, 1977

ESTATE OF A. DEVEREAU CHESTERTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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The question presented in this federal estate tax case is whether a widow's claim for support against her former husband's estate should be valued at the actual amount of the estate's liability to her, which became known prior to the filing of the estate tax return, as the Court of Claims held, or at the actuarially computed value of the claim as of the date of the decedent's death, as petitioner contends.

The pertinent facts are as follows: A. Devereau Chesterton died on May 15, 1969, survived by his wife, Marjorie (Pet. App. A, p. 2). Prior to his death, Chesterton and his wife had entered into an agreement in anticipation of their divorce, under which he agreed to make certain payments to her during his life and to make a bequest to her of alimony payments of $500 per month for as long as she lived and remained unmarried (*ibid.*). Marjorie remarried nine months after the decedent's

death (*ibid.*). Subsequently, in filing its estate tax return, petitioner ignored the fact that Marjorie's remarriage terminated the estate's obligation to make monthly payments to her and computed its taxable estate by deducting $59,047.97 as a claim against the estate under Section 2053(a)(3) of the Internal Revenue Code of 1954, 26 U.S.C. 2053(a)(3). That amount was the actuarially computed value of Marjorie's claim as of the date of the decedent's death (Pet. App. A, p. 2). However, at the time petitioner filed the estate tax return, Marjorie's claim against the estate already had been fully satisfied by the payment of $4,500. On audit, the Commissioner of Internal Revenue disallowed the claimed deduction to the extent that it exceeded $4,500. Petitioner paid the resulting deficiency and instituted this refund suit in the Court of Claims (*ibid.*).

The Court of Claims upheld the government's contention that the deduction was limited to $4,500, the actual amount of its liability to the decedent's former wife. In so ruling, the court rejected petitioner's argument that the claim should be actuarially valued as of the date of the decedent's death without regard to the fact that the former wife's remarriage terminated the estate's liability to her (Pet. App. A, pp. 3-10).

The Court of Claims correctly held that the deduction for petitioner's liability to the decedent's wife was limited to the amount of its actual liability to her after taking her remarriage into account. Petitioner argues (Pet. 5) that the decision below conflicts with *Ithaca Trust Co.* v. *United States*, 279 U.S. 151. That case involved the proper amount of an estate tax charitable deduction of a remainder interest given to a charitable organization, under the predecessor of the present Section 2055 of the 1954 Code, 26 U.S.C. 2055. The life tenant died prior to the date on which the estate tax return was

filed, but the Court limited the amount of the deduction to the value of the bequest actuarially computed as of the date of the decedent's death (279 U.S. at 154-155). Petitioner argues that *Ithaca Trust Co.* requires the use of a date-of-death valuation for the decedent's wife's claim without regard to the fact that subsequent events terminated that claim. The lower courts, however, uniformly have rejected the contention that *Ithaca Trust Co.* extends to deductions for claims against the estate under Section 2053. Where the amount of a claim as of the date of the decedent's death has been altered as a result of subsequent events, the courts have taken those events into account in determining the deduction allowable to the estate. See, *e.g.*, *Jacobs* v. *Commissioner*, 34 F. 2d 233 (C.A. 8), certiorari denied, 280 U.S. 603; *Commissioner* v. *Shively's Estate*, 276 F. 2d 372, 374-375 (C.A. 2); *Estate of Hagmann* v. *Commissioner*, 60 T.C. 465, 467-469, affirmed *per curiam*, 492 F.2d 796 (C.A. 5); *Gowetz* v. *Commissioner*, 320 F. 2d 874, 876 (C.A. 1); see, also, *Estate of Metcalf* v. *Commissioner*, 7 T.C. 153, 160-161, affirmed without opinion, May 15, 1947, 47-2 U.S.T.C. par. 10,566 (C.A. 6); *Estate of Ethel M. Duval* v. *Commissioner*, 4 T.C. 722, 725-726, affirmed, 152 F.2d 103 (C.A. 9), certiorari denied, 328 U.S. 838; cf. *Commissioner* v. *State Street Trust Co.*, 128 F.2d 618, 622 (C.A. 1).

Unlike the charitable contribution provision considered in *Ithaca Trust Co.*, the statutory deduction for claims against the estate takes post-death events into account. Section 2053 authorizes deductions for obligations (such as funeral expenses and expenses of administration) which do not come into existence until after the decedent's death. Treasury Regulations on Estate Tax (1954 Code), Section 20.2053-1(b)(3) (26 C.F.R.) also make clear that the deductibility of a claim is not to be determined solely

on the basis of the circumstances existing as of the date of the decedent's death. Thus, the Regulations provide that where a deduction for a claim against the estate has been disallowed because its amount was not reasonably ascertainable at the time of the final audit of the return, the estate may file a claim for refund if the liability subsequently becomes ascertainable. If, however, the strict date-of-death valuation urged by petitioner were adopted, no deduction for claims not reasonably ascertainable as of the date of the decedent's death would be allowable even though the amount of the liability were subsequently ascertained.[1]

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

AUGUST 1977.

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[1]Petitioner further asserts (Pet. 6-9) that even if the decision below does not conflict with *Ithaca Trust Co.*, review by this Court is necessary to eliminate the confusion concerning the method to be applied in valuing claims against an estate. There is, however, no such confusion among the lower courts regarding the legal principles to be applied (see p. 3, *supra*).